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SERVICE DATE – FEBRUARY 27, 2017

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 263X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN
COOK COUNTY, IL

Decided: February 24, 2017

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon the Weber Industrial Lead from milepost 5.8 near Wilson Avenue, Chicago, to milepost 9.5 near Touhy Avenue, Skokie, in Cook County, Ill., a distance of 3.7 miles. Notice of the exemption was served and published in the Federal Register on November 18, 2008 (73 Fed. Reg. 68,497). The exemption became effective on December 18, 2008.

By decision and notice of interim trail use or abandonment (NITU) served on December 17, 2008, the proceeding was reopened and a 180-day period was authorized for (1) the Village of Lincolnwood, Ill. (the Village), to negotiate an interim trail use/rail banking agreement with UP for a portion of the line located in the Village of Lincolnwood, from approximately milepost 8.4 at Devon Avenue to the border with the Village of Skokie, Ill., at approximately milepost 9.45 near Touhy Avenue, a distance of approximately 1.05 miles, and (2) the City of Chicago, acting by and through its Department of Transportation (the City), to negotiate an interim trail use/rail banking agreement with UP for that portion of the line from milepost 5.8 near Wilson Avenue to the border with the Village at approximately milepost 8.4 near Devon Avenue, a distance of approximately 2.6 miles. After a series of extensions of the negotiating period, UP filed a letter on April 20, 2016, with an attached joint notice of trail use agreement between UP and the Village for the portion of the NITU under negotiation between those two parties.

For the portion of the NITU under negotiation between UP and the City, a number of requests to extend the negotiating period were filed and granted until the City filed an extension request on May 8, 2015. On May 27, 2015, UP replied to the City's May 8 extension request stating that it was willing to extend the negotiating period for 180 days, but only for a reduced portion of the line from milepost 7.1 near Bryn Mawr Avenue to the border with the Village at approximately milepost 8.4 near Devon Avenue, a distance of approximately 1.3 miles. UP stated that the remaining portion of the line from milepost 5.8 near Wilson Avenue to milepost 7.1 near Bryn Mawr Avenue had been withdrawn from the abandonment authorization at issue and would remain a part of UP's railroad system. On July 20, 2015, the Board reopened the proceeding and —consistent with what UP had consented to in its May 27, 2015 reply—

granted the extension of the NITU originally issued on December 17, 2008, for the segment from milepost 7.1 to milepost 8.4 only.

Subsequently, a number of requests to extend the negotiating period have been filed and granted for the shortened segment. Most recently, on November 17, 2016, the City filed a request for an extension of the negotiating period for an additional 180 days, until May 5, 2017. In that filing, the City states that UP may request that the Board restore the length of the segment at issue in this abandonment docket to the original length, and that the City would renew its willingness to take on the requirements of interim trail use for the entire segment for which it had originally agreed to negotiate. On November 22, 2016, UP filed a letter stating that it agrees to extend the NITU negotiating period for the original length (the segment from milepost 5.8 to milepost 8.4).

The section of rail from milepost 5.8 to milepost 7.1 is no longer authorized for abandonment. UP stated in its May 27, 2015 filing that that section was “withdrawn from the abandonment authorization” and would remain within UP’s railroad system. Even without this explicit withdrawal, milepost 5.8 to milepost 7.1 is no longer subject to the NITU, as the NITU expired with respect to that segment on May 16, 2015, and was not renewed by the Board’s July 20, 2015 decision. When more than a year has passed since service of the decision authorizing abandonment and the last legal or regulatory barrier to consummation is removed or expires—as was the case here—a notice of consummation must be filed within 60 days or the authority to abandon automatically expires. 49 C.F.R. § 1152.29(e)(2). As no notice of consummation was timely filed, UP must seek abandonment authority anew for the segment between milepost 5.8 and milepost 7.1 should it desire to abandon or railbank that segment.

For the section of the line still subject to the NITU, from milepost 7.1 to milepost 8.4, the negotiating period will be extended. Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended.¹ Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU extension request will be granted for the rail line located between milepost 7.1 and approximately milepost 8.4. The extension will be for an additional 180 days, to May 5, 2017.

¹ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).

It is ordered:

1. The City's November 17, 2016 request to extend the NITU for the segment from milepost 7.1 to milepost 8.4 for 180 days, until May 5, 2017, is granted.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.